

SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS OFFEROR TO COMPLETE BLOCKS 10b, 12, 17, 23, 24, & 30				1. REQUISITION NO. 936513		PAGE 1 OF 11	
2. CONTRACT NO.		3. AWARD/EFFECTIVE DATE See Block 31c		4. WORK ORDER NO.		5. SOLICITATION NO. M05-185	
7. FOR SOLICITATION INFORMATION CONTACT		a. NAME Valerie Ferrone vferrone @ncifcrf.gov				b. TELEPHONE NO. (No collect calls) (301) 846-1125	
8. OFFER DUE DATE/LOCAL TIME 7/1/05 / 4:00 PM		9. ISSUED BY SAIC-FREDERICK, INC. NCI FREDERICK P.O. BOX B/ROOM 213 BLDG. 1050 BOYLES STREET, FORT DETRICK FREDERICK, MD 21702-1201		10. THIS ACQUISITION <input type="checkbox"/> UNRESTRICTED SET ASIDE: FOR <input type="checkbox"/> SMALL BUSINESS <input type="checkbox"/> SMALL DISADV. <input type="checkbox"/> 8(A) 10b. FEDERAL ID: NAICS: SIZE STD:		11. DELIVERY FOB DESTINATION UNLESS BLOCK IS MARKED <input type="checkbox"/> <input type="checkbox"/> 13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700) 13b. RATING N/A 14. METHOD OF SOLICITATION <input type="checkbox"/> RFQ <input type="checkbox"/> IFB <input checked="" type="checkbox"/> RFP	
12. DISCOUNT TERMS		15. DELIVER TO NCI FREDERICK BLDG. 1050, FORT DETRICK FREDERICK, MD 21702-1201		16. ADMINISTERED BY SEE BLOCK 9			
17a. CONTRACTOR/ CODE		FACILITY CODE		18a. SUBMIT INVOICE TO SAIC-FREDERICK, INC. ACCOUNTS PAYABLE DEPARTMENT P.O. BOX B FREDERICK, MD 21702-1201 Telephone No. 301-846-1136			
<input type="checkbox"/> 17b. CHECK IF REMITTANCE IS DIFFERENT AND INCLUDE SUCH ADDRESS IN OFFER				18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK IS CHECKED. <input checked="" type="checkbox"/> SEE SPECIAL CONDITIONS			
19. ITEM	20. SCHEDULE OF SUPPLIES/SERVICES			21. QTY	22. UNIT	23. UNIT PRICE	24. AMOUNT
1	Service Contract (Year 1) Service Contract (Opt. 1, Year 2) Service Contract (Opt. 2, Year 3)						
25. ACCOUNTING AND APPROPRIATION DATA						26. TOTAL AWARD AMOUNT (For SAIC-F use only) \$	
<input checked="" type="checkbox"/> 27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1 AND 52.212-3 and FAR 52.212-4 BY REFERENCE IF NOT ATTACHED. ADDENDA <input type="checkbox"/> ARE <input checked="" type="checkbox"/> ARE NOT ATTACHED. <input type="checkbox"/> 27b. SOLICITATION INCORPORATES FAR 52.222-26, FAR 52.222-35, AND FAR 52.222-36 BY REFERENCE IF NOT ATTACHED <input type="checkbox"/> 27c. SAIC STANDARD TERMS AND CONDITIONS, DATED 1/20/05, ARE INCORPORATED BY REFERENCE IF NOT ATTACHED <input type="checkbox"/> 27d. CONTRACT/PURCHASE ORDER INCORPORATES FAR 52.212-4 BY REFERENCE ADDENDA <input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED							
28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN <u>1</u> COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED HEREIN. <input checked="" type="checkbox"/>				29. AWARD OF CONTRACT ITEM(S) ACCEPTED: <input type="checkbox"/>			
30a. SIGNATURE OF OFFEROR/CONTRACTOR				31a. (SIGNATURE OF CONTRACTING OFFICER)			
30b. NAME AND TITLE OF SIGNER (TYPE OR PRINT)		30c. DATE SIGNED		31b. NAME OF CONTRACTING OFFICER (TYPE OR PRINT) Debra Hogarty, Supervisor, PURCHASING		31c. DATE SIGNED	

SAIC-Frederick, Inc.

Solicitation No. M05- 185

A. SUPPLIES/SERVICES

<u>ITEM #</u>	<u>SUPPLIES / SERVICES</u>	<u>QTY</u>	<u>UNIT</u>	<u>UNIT PRICE</u>		<u>RENEWAL</u>	<u>RENEWAL</u>
				<u>YEAR 1</u>	<u>YEAR 2</u>	<u>OPTION 1</u>	<u>OPTION 2</u>
						<u>YEAR 3</u>	
1.	Service Contract covering:						
			YR	1	\$	\$	\$
1.	Purification System, S/N 13028, Model: Autopure LS, Located in Bldg 433, Rm 18						

B. SPECIFICATIONS/WORK STATEMENT

1. General terms of the service agreement will be as follows:

EMERGENCY SERVICE:

Provided during normal working hours.

Parts and labor shall be included.

Response time shall be 24 hours.

(response time is defined as the time elapsed between notification to authorized vendor representative _____, telephone number and time repair is initiated at the repair site).

PM VISITS:

Number of PM visits per year _____ (minimum one per year).

Parts (damaged due to normal wear), travel and labor shall be included.

Maintenance of the equipment shall be performed by authorized technical service representatives, who on each visit shall perform visual and electrical inspection as deemed necessary.

Any service not covered under this service agreement must be directly authorized and confirmed by Mr. William Clagett, Support and Scientific Equipment Specialist, SAIC-Frederick, Inc.

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2. All work shall be performed for the SAIC-Frederick, Inc. at the location shown in A-1.
3. Contractor shall present to the Equipment Maintenance Office (Building 1050, Room 126) an activity report following any and all site visits (emergency or preventative maintenance). If unable to deliver this report personally, Contractor shall FAX within 24 hours of said site activity (301-846-6154). Neglect of this clause may result in Contractor performance deficiency citation(s).
4. If contractor is unable to submit an annual invoice for this agreement, state frequency of invoicing (monthly, quarterly, etc.).
5. Offerors are requested to provide assembled mean time between failure data, the estimated mean time to repair data, and any additional life cycle analysis which may be available.
6. SUBCONTRACTING PLAN. Submission of a Small Business Subcontracting Plan will be required for this acquisition. The following clauses are incorporated by reference.

FAR Clause 52.219-8 Utilization of Small Business Concerns

FAR Clause 52.219-9 Small Business Subcontracting Plan

FAR Clause 52.219-16 Liquidated Damages - Subcontracting Plan

The full text of a clause is available at the following address:
<http://www.arnet.gov/far/>.

In order to be eligible for an award, the offeror shall submit a subcontracting plan with the proposal submitted in response to this solicitation. This requirement does not apply to small business concerns.

Offeror must provide with the proposal the name, title, telephone number, fax number and e-mail address of the individual who will administer the subcontracting plan.

Offeror shall submit periodic reports and surveys, etc., as required to the Small Business Office, SAIC-Frederick, Inc., Building 1050, Frederick, MD 21702-1201 Attn: Ms. Cynthia Farling.

C. CONTRACT TERMS/LOGISTICS

1. If consumables or other parts are excluded from coverage under this contract, a list of all excluded items must accompany this offer. Any items not listed shall be considered covered by this service maintenance agreement should award occur.
2. Effective dates for this subcontract shall be from 8/1/05 through 7/31/06.

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3. SAIC-Frederick, Inc. reserves the right to propose or discontinue maintenance service and pay for covered time only (pro-rata) on an item by item basis.
4. PERIOD OF PERFORMANCE. (CY dates are shown below for option years).

August 1, 2005 through July 31, 2006
August 1, 2006 through July 31, 2007
August 1, 2007 through July 31, 2008
5. Offers of a multi-year service maintenance agreement for coverage of the cited equipment will be considered. Please quote pricing for a one (1) year agreement and renewal option(s) as specified in A.1. This solicitation is intended to result in either a one (1) year contract or a one (1) year contract and option(s) to renew.
6. This is a multi-year contract, however, funds are not presently available for years 2 and 3; obligation to purchase is contingent upon the availability of appropriated funds.
7. OFFERS. All proposals, modifications and/or withdrawals must be signed, dated and received in the place specified and at the time required in this solicitation document.

Telephone offers will not be accepted; however, offers will be accepted transmitted via facsimile machine (301) 846-5311.

Offers may be withdrawn by written notice received at any time before the exact time set for receipt of bids in accordance with FAR clause 52.214-7(e).

Offers must be compliant with all solicitation requirements in order to be eligible for award.

Offerors may submit multiple offers that satisfy the requirements of this solicitation. Each offer submitted will be evaluated separately.

Offers may be submitted on SAIC-Frederick, Inc. forms or on offeror letterhead stationery. For the latter, the same format must be utilized and the offeror must enter "see attached" next to the sections that are separately addressed on their letterhead. All attached pages must be marked with the solicitation number. If the pricing structure renders the offeror unable to conform to the requested format. Offer must state 1) the reason(s) for non-conformance and 2) the extent of agreement with all terms, conditions, and provisions included in the solicitation. Offerors that fail to furnish the required representations or information, or reject the terms and conditions of the solicitation will be excluded from consideration.

8. By offer submission the offeror agrees that in the event the prime contract of SAIC Frederick, Inc. is succeeded by a successor contractor as selected by the Government, before any award by SAIC

Frederick, Inc. the offer may be assigned to the successful contractor.

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9. INVOICE SUBMISSION

A. Invoices shall be prepared in accordance with the following:

1. An original and one (1) copy to the following designated payment office:
Attn: Accounts Payable Department
SAIC-Frederick, Inc.
P.O. Box B
Frederick, Maryland 21702-1201
2. An invoice is a written request for payment under the contract for items delivered or services rendered. In order to be proper, an invoice must include, as applicable, the following:
 - a. Invoice date, (note: date of Contractor's invoice shall not be earlier than delivery/service date);
 - b. Contractor name;
 - c. Order number and Contract number, as entered in Blocks 4 and 2 of SF-1449-04, respectively (including delivery order number, if applicable);
 - d. Description of items or services, quantity, contract unit of measure, contract unit price, and extended total;
 - e. Payment terms and any trade discounts or allowances;
 - f. Name and address to which payment is to be sent; and
 - g. Name, title, phone number, and mailing address of person to be notified in event of a defective invoice.
 - h. Back-up documentation for fees and expenses, such as airline tickets, telephone bills, rental car receipts, parking receipts, hotel receipts, etc.

B. SAIC-Frederick, Inc. shall pay the Contractor, upon the submission of proper invoices or vouchers, the prices stipulated in this contract for services rendered and accepted, less any deductions provided in this contract.

10. Contractor must provide a formal Service Maintenance Agreement or Terms of Service on Company letterhead.
11. All services provided against this contract shall be subject to the terms and conditions of this contract. In the event of conflict between a service and this contract, the contract shall control.
12. Should SAIC-Frederick, Inc. find the service not in compliance with the contract, contractor shall re-perform the service at no extra charge.
13. The SAIC-Frederick, Inc. retains the right to access the contractor's pertinent accounting records,

personnel, job sites, warehouses and other contract related areas to the extent that such accounts are relevant to the contract work. This right may be exercised at any time during the course of the contract and will occur during normal business hours upon thirty days notice to the contractor.

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14. NON-HIRING. For the term of this agreement and for sixty (60) calendar days thereafter, neither buyer nor seller shall solicit, offer employment, or hire the other's employees without the prior consent of the employing party. This does not apply to employees independently responding to advertised positions on company websites or media advertisements.
15. ADMINISTRATIVE INFORMATION. Offerors shall provide the following information:
- a. Federal Tax Identification Number or Employer Identification Number.
 - b. Business classification: LB, SB, SDB, Small WOB, HUBZone, Vet, DVet
16. SAIC-Frederick, Inc. is eligible for Federal Supply Schedule pricing. If the items offered are on FSS, the contract number must be cited and a copy of the GSA Schedule or VA Schedule must accompany the offer.
17. QUESTIONS.
- Questions concerning this solicitation shall be directed in writing to Valerie Ferrone, Purchasing Department, SAIC-Frederick, Inc., 1050 Boyles Street, Frederick, MD 21702, telephone (301) 846-1125 fax: (301) 846-5311, or email: vferrone@mail.ncifcrf.gov; by July 1, 2005.
 - The written questions received by date above and the answers to those questions will be provided to all offerors.
18. SUBMITTAL FORMAT All forms and submissions must be in the required format to be eligible for award. Failure to adhere to any completion requirement will cause the offer to be considered non-responsive.

Proposal Elements. Offeror shall submit a complete proposal that contains the following elements:

- Form SF 1449-04 with signature and requisite blocks completed.
- Subcontracting Plan
- Initialed Terms and Conditions
- Insurance Certificates as referenced in number nineteen of the Terms and Conditions

Mailing Envelope. Offeror must return the proposal with the solicitation number M05-185 clearly visible on the outside of the sealed proposal envelope. The SAIC-Frederick, Inc. will not be responsible for the handling of any offers not returned with the solicitation number shown in the required manner.

Proposal Package. The proposal packages shall be addressed as follows: SAIC-Frederick, Inc.,

1050 Boyles Street, Frederick, MD 21702-1201, ATTN: Valerie Ferrone Rm. 213.

19. The offeror must provide with the proposal Certificates of Insurance in accordance with #19 of the attached SAIC-Frederick Terms and Conditions.

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D. EVALUATION

1. EVALUATION FACTORS

- a. Basis of award shall be as follows:

1. Vendor Performance
2. Acceptability of Product/Service
3. Cost

2. Award of any order or subcontract as a result of this solicitation will NOT be made to any supplier with evident deficient past performance as documented in the SAIC-Frederick, Inc. Vendor File.

TERMS AND CONDITIONS

1. GOVERNMENT RELATIONSHIP

This Order is made by SAIC-Frederick, Inc., a Subsidiary of Science Applications International Corporation under its contract with the National Cancer Institute at Frederick (NCI-Frederick). The provisions and clauses contained herein are influenced by and reflect the relationship of the parties in that contract, which was awarded and is administered under the provision of the Federal Acquisition Regulation (FAR). There is no privity of contract between the Seller and the Government.

2. GENERAL RELATIONSHIP

The Seller is not an employee of SAIC-Frederick, Inc. for any purpose whatsoever. Seller agrees that in all matters relating to this Order it shall be acting as an independent contractor and shall assume and pay all liabilities and perform all obligations imposed with respect to the performance of this Order. Seller shall have no right, power or authority to create any obligation, expressed or implied, on behalf of Buyer and/or Buyer's customers and shall have no authority to represent Buyer as an agent.

3. DEFINITIONS

Buyer – SAIC-Frederick, Inc.

Seller – The party (contractor) receiving the award from SAIC-Frederick, Inc.

Contracting Officer – The SAIC-Frederick, Inc. person with the authority to enter into and administer Orders. The term includes authorized representatives of the Contracting Officer acting within their delegated authority.

Order – The contractual agreement between SAIC-Frederick, Inc. and the Seller.

Special Definitions – See paragraph 4 for the special definitions that apply in the use of the solicitation and award clauses of this Order.

4. SOLICITATION AND AWARD CLAUSES – SPECIAL DEFINITIONS

FAR clauses included in this Order, including any solicitation document, shall be interpreted as follows:

Unless a purposeful distinction is made clear and the context of the clause requires retention of the original definition, the term "Contractor" shall mean Seller, the term "Contract" shall mean this Order, the term "Subcontractor" shall mean subcontractors of Seller at any tier, and the terms "Government", "Contracting Officer" and equivalent phrases shall mean SAIC-Frederick, Inc. and SAIC-Frederick's Contracting Officer,

respectively. It is intended that the referenced clauses shall apply to Seller in such manner as is necessary to reflect the position of Seller as a contractor to SAIC-Frederick, Inc. to insure Seller's obligations to SAIC-Frederick, Inc. and to the United States Government, and to enable SAIC-Frederick, Inc. to meet its obligations under its Prime Contract.

Full text of the referenced clauses may be found in the FAR (Code of Federal Regulation [CFR] Title 48), obtainable from the Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402 or online at <http://www.arnet.gov/far/>.

Copies of the clauses will be furnished by the Contracting Officer upon request.

5. ENTIRE AGREEMENT

This Order, including all attachments and/or documents incorporated by reference by Buyer, shall constitute the entire agreement between Buyer and Seller. No other document (including Seller's proposal, quotation or acknowledgement forms, etc.) shall be a part of this order, even if referred to, unless specifically agreed to in writing by Buyer. No right that Buyer has regarding this Order may be waived or modified except in writing by Buyer.

6. ACCEPTANCE AND MODIFICATION OF TERMS

Acceptance of this Order by Seller may be made by signing the acknowledgement copy hereof or by partial performance hereunder, and any such acceptance shall constitute an unqualified agreement to all terms and conditions set forth herein unless otherwise modified in writing by the parties. Any additions, deletions or differences in the terms proposed by Seller are objected to and hereby rejected, unless Buyer agrees otherwise in writing. No additional or different terms and conditions proposed by the Seller in accepting this Order shall be binding upon Buyer unless accepted in writing by Buyer and no other addition, alteration or modification to, and no waiver of any of the provisions herein contained shall be valid unless made in writing and executed by Buyer and Seller. Seller shall perform in accordance with the Description/Quantity schedule set forth in this Order and all attachments thereto.

7. LEGAL CONSTRUCTION AND INTERPRETATIONS

This Order shall be governed by and interpreted in accordance with the principles of Federal Contract Law, and to the extent that Federal Contract Law is not dispositive, and the state law becomes applicable, the law of the State of Maryland shall apply.

8. COMPLIANCE WITH LAWS AND REGULATIONS

Seller shall submit all certifications required by Buyer under this Order and shall at all times, at its own expense, comply with all applicable Federal, State and local laws, ordinances, administrative orders, rules or regulations.

9. GIFTS

Seller shall not make or offer a gratuity or gift of any kind to Buyer's employees or their families. Seller should note that the providing of gifts or attempting to provide gifts under government subcontracts might be a violation of the Anti-Kickback Act of 1986 (4 U.S.C. 51-58).

10. MARYLAND SALES AND USE TAX

The State of Maryland has issued Direct Payment Permit #3 to SAIC-Frederick, Inc. for all vendor purchases for the NCI-Frederick effective August 29, 1996. A copy of this certificate is available to vendors upon request. SAIC-Frederick, Inc. is authorized to make direct payment of sales and use tax to the State of Maryland and vendors are not to add sales tax to invoices, nor are they responsible for collection of such taxes for purchases by SAIC-Frederick, Inc. for the NCI-Frederick after the above date.

11. BUYER FURNISHED DATA AND MATERIALS

All data and materials furnished by Buyer to Seller under this Order including drawings, specifications and written information and Buyer-owned parts and/or Buyer-owned tools and equipment shall be used solely for the work to be performed under this Order. Seller shall repair and maintain all tools at its own expense unless agreed to otherwise. Seller agrees to promptly return all such data and materials upon completion of the work or termination of this Order. Seller agrees to return all materials in the same condition as delivered to Seller, reasonable wear and tear excepted.

12. NOTICE OF DELAY

Seller agrees to immediately notify Buyer in writing of any actual or potential delay in Seller's performance under this Order. Such notice shall, at a minimum, describe the cause, effect, duration and corrective action proposed by Seller to address the problem. Seller shall give prompt written notice to the Buyer of all changes to such conditions.

13. CHANGES AND SUSPENSION

Buyer may, by written notice to Seller at any time, make changes within the general scope of this Order in any one or more of the following: (a) drawings, designs or specifications; (b) quantity; (c) time or place of delivery; (d) method of shipment or packing; and (e) the quantity of Buyer furnished property. Buyer may, for any reason, direct Seller to suspend, in whole or in part, delivery of goods or performance of services hereunder for such period of time as may be determined by Buyer in its sole discretion. If any such change or suspension causes a material increase or decrease in the cost of, or the time required for the performance of any part of the work under this Order, an equitable adjustment shall be made in the Order price or delivery schedule, or both, provided Seller shall have notified Buyer in writing of any claim for

such adjustment within twenty (20) days from the date of notification of the change or suspension from Buyer. No such adjustment or any other modification of the terms of this Order will be allowed unless authorized by Buyer by means of a written modification to the Order. Seller shall proceed with the work as changed without interruption and without awaiting settlement of any such claim.

14. ADVERTISING

Seller agrees that prior to the issuance of any publicity or publication of any advertising that in either case makes reference to this Order, or to Buyer, Seller will obtain the written permission of Buyer with respect thereto.

15. CONFIDENTIAL INFORMATION

Seller shall not at any time, even after the expiration or termination of this Order, use or disclose to any person for any purpose other than to perform this Order, any information it receives, directly or indirectly from Buyer in connection with this Order, except information that is or becomes publicly available, or is rightfully received by Seller from a third party without restriction. Upon request by Buyer, Seller shall return to Buyer all documentation and other material containing such information.

Seller shall not disclose to Buyer any information that it deems to be confidential or proprietary, and it is understood that no information received by Buyer, including manuals, drawings and documents, will be of a confidential nature or restrict in any manner the use or disclosure of such information by Buyer. Seller agrees that any legend or other notice on or pertaining to any information or materials supplied by it that is inconsistent with the preceding sentence shall create no obligation on the part of Buyer.

16. INDEMNIFICATION

Seller shall indemnify, defend and hold harmless Buyer from and against any and all claims, liabilities, damages, losses, causes of action, lawsuits, costs and expenses, including reasonable attorneys' fees and litigation costs incurred in connection therewith and regardless of legal theory (hereinafter referred to as "claims"), occasioned wholly or in part by any act or omission of Seller or any of its lower tiers, or their employees, agents or representatives arising out of or relating to this Order. Notwithstanding the foregoing, Seller's obligations under this Section shall not apply to any claims that are finally determined by a court of competent jurisdiction to be occasioned solely by the negligence or willful misconduct of Buyer.

17. INFRINGEMENT INDEMNITIES

Seller shall indemnify, defend and hold Buyer and Buyer's customers (hereinafter collectively referred to as "Buyer") harmless from and against any claim, suit or proceeding ("claim") brought against Buyer asserting that the goods or services, or any part thereof, furnished under this Order, or Buyer's use (including resale) thereof, constitutes an infringement of any patent, trademark, trade secret, copyright or other intellectual property right, and Seller shall pay all damages and costs awarded against and reasonable expenses incurred by Buyer in connection with such claim including reasonable attorneys' fees. In the event such goods or services or use thereof are enjoined in whole or

in part, Seller shall at its expense and option undertake one of the following: (i) obtain for Buyer the right to continue the use of such goods or services; (II) in a manner acceptable to Buyer, substitute equivalent goods or services or make modifications thereto so as to avoid such infringement and extend this indemnity thereto; or (III) refund to Buyer an amount equal to the purchase price for such goods or services plus any excess costs or expenses incurred in obtaining substitute goods or services from another source.

18. NON-WAIVER OR RIGHTS

The failure of Buyer to insist upon strict performance of any of the terms and conditions in this Order or to exercise any rights or remedies, shall not be construed as a waiver of its rights to assert any of same or to rely on any such terms or conditions at any time thereafter. Any rights and remedies specified under this Order shall be cumulative, non-exclusive and in addition to any other rights and remedies available at law or equity. The invalidity in whole or in part of any term or condition of this Order shall not affect the validity of other parts thereof.

19. INSURANCE REQUIREMENTS-FOR WORK ON A GOVERNMENT INSTALLATION

If this Order entails effort on a Government installation, including any off-site buildings owned or leased by the Government, the Seller must provide and maintain the minimum amounts of insurance stated below.

At Buyer's request, Seller agrees to provide Certificates of Insurance evidencing that the required insurance coverages are in force and providing not less than thirty days written notice prior to any cancellation or restrictive modification of the policies.

Further, the required insurance coverages below shall be primary and non-contributing with respect to any other insurance that may be maintained by Buyer. The below required coverages and their limits in no way lessen nor affect Seller's other obligations or liabilities set forth in this Order.

Seller agrees to purchase and maintain at its own expense the following insurance coverages with minimum limits as stated:

- (i) Statutory Workers' Compensation and Employer's Liability in an amount no less than \$1 Million per occurrence covering its employees, including a waiver of subrogation obtained from the carrier in favor of Buyer;
- (ii) Commercial General Liability in an amount no less than \$1 Million per each occurrence and \$2 Million in this Aggregate covering bodily injury, broad form property damage, personal injury, products and completed operations, contractual liability and independent contractors' liability. Buyer, its officers and employees shall be included as Additional Insureds and a waiver of subrogation shall be obtained from the carrier in favor of Buyer;

- (iii) Automobile Liability in an amount no less than \$1 Million Combined Single Limit for Bodily Injury covering use of all owned, non-owned, and hired vehicles. Buyer, its officers and employees shall be included as Additional Insureds on the policy;
- (iv) Professional Liability in an amount no less than \$1 Million per occurrence covering damages caused by any acts, errors, and omissions arising out of the professional services performed by Seller, or any person for whom the Seller is legally liable. To the extent that coverage for Seller's services are not excluded in (ii) above by virtue of being deemed not of a professional nature, this requirement does not apply.
- (v) All-Risk Property Insurance in an amount adequate to replace property, including supplies covered by this Order, of Buyer and/or Buyer's customer that may be in the possession or control of Seller. Buyer shall be named as a Loss Payee with respect to loss or damage to said property and/or supplies furnished by Buyer.

20. EXPORT CONTROL COMPLIANCE FOR FOREIGN PERSONS

Seller shall not, nor shall Seller authorize or permit its employees, agents or lower tiers to disclose, export or re-export any Buyer information, or any process, product or services that is produced under this Order, without prior notification to Buyer and complying with all applicable Federal, State and local laws, regulations and ordinances, including the regulations of the U.S. Department of Commerce and/or the U.S. Department of State. In addition, Seller agrees to immediately notify Buyer if Seller is listed on any of the Department of State, Treasury or Commerce proscribed persons or destinations lists, or if Seller's export privileges are otherwise denied, suspended or revoked in whole or in part.

Under its contract with NCI-Frederick, Buyer conducts research activities that include export-controlled technology that cannot be readily segregated. Buyer may require Seller (including any lower tiers) to place restrictions on their work force performing onsite at SAIC-Frederick, Inc. to protected individuals as established under the guidelines of the Commerce Department Export Administration Regulations (EAR) and the State Department International Traffic in Arms Regulations (ITAR).

Contractors (including any lower tiers) may be required to disclose the status of personnel proposed to perform work onsite prior to award.

Contractors shall include in all agreements and related documents with lower tiers, notice to third parties that the export of any process, goods and/or technical data from the United States may require an export control license from the U.S. Government and that, failure to obtain such export control license, may result in

termination of subcontract, and/or criminal liability under U.S. laws.

21. ASSIGNMENT

Neither this Order nor any interest herein may be assigned, in whole or in part, without the prior written consent of Buyer except that the Seller shall have the right to assign this Order to any successor of such party by way of merger or consolidation or the acquisition of substantially all of the business and assets of the Seller relating to the subject matter of this Order. This right shall be retained provided that such successor shall expressly assume all of the obligations and liabilities of the Seller under this Order, and that the Seller shall remain liable and responsible to Buyer for the performance and observance of all such obligations.

Notwithstanding the foregoing, any amounts due the Seller may be assigned in accordance with the provisions of the clause 52.232-23, Assignment of Claims.

In the event the prime contract of SAIC-Frederick, Inc. with the Government is succeeded by a successor contractor selected by the Government, this Order may be assigned to the successor contractor.

22. DISPUTES

Buyer and Seller agree to first enter into negotiations to resolve any controversy, claim or dispute ("dispute") arising under or relating to this Order. The parties agree to negotiate in good faith to reach a mutually agreeable resolution of such dispute within a reasonable period of time. If good faith negotiations are unsuccessful, Buyer and Seller agree to resolve the dispute by binding and final arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect. The arbitration shall take place in the County of Frederick, State of Maryland. The arbitrator(s) shall be bound to follow the provisions of this Order in resolving the dispute, and may not award punitive damages. The decision of the arbitrator(s) shall be final and binding on the parties, and any award of the arbitrator(s) may be entered or enforced in any court of competent jurisdiction.

Pending any decision, appeal or judgment referred to in this provision or the settlement of any dispute arising under this Subcontract, Seller shall proceed diligently with the performance of this Subcontract.

23. NOTIFICATION OF DEBARMENT/SUSPENSION

By acceptance of this Order either in writing or by performance, Seller certifies that as of the date of award of this Order neither the Seller, lower tiers, nor any of its principals, is debarred, suspended, or proposed for debarment by the Federal Government. Further, Seller shall provide immediate written notice to the Buyer in the event that during performance of this Order the Seller or any of its principals is debarred, suspended, or proposed for debarment by the Federal Government.

24. QUALITY ASSURANCE

The Buyer, and/or personnel authorized by Buyer, shall have the right, at all reasonable times, to visit Seller's

facilities or such parts thereof as may be engaged in work relating to this Order in order to verify that Seller's performance is in accordance with all requirements of this Order. In addition, the Buyer, and/or personnel authorized by Buyer, shall have the right, at all reasonable times, to visit the facilities of the Seller's lower tiers or such parts thereof as may be engaged in work relating to this Order. The Seller shall include a like provision in all related lower-tier subcontracts. Nothing herein shall give the Buyer the right to issue direct orders or instructions to Seller's lower tiers. Seller shall be furnished prior notice of any planned visit.

25. ORDER OF PRECEDENCE

In the event of an inconsistency or conflict between these SAIC Terms and Conditions and the Order issued, the inconsistency or conflict shall be resolved by giving precedence in the following order:

- 1) The Order and any provisions.
- 2) SAIC-Frederick, Inc. Standard Terms and Conditions and Exhibits thereto.
- 3) Specifications and/or drawings.
- 4) Other documents or exhibits when attached.

26. TERMINATION

Buyer may terminate this Order (in whole or in part) for convenience or for cause pursuant to the Federal Acquisition Regulation Part 49, "Terminations of Contracts" and/or the provisions of the individual Order.

27. SECURITY

Under its contract with NCI-Frederick, SAIC-Frederick, Inc. may be required to conduct, on persons performing work on Government Owned or controlled installations, individual background checks prior to the commencement of effort. As part of this process, information will be required to enable SAIC-Frederick, Inc. to conduct the appropriate background checks, including name (including any aliases), daytime phone number, SSN, date of birth, and country of birth. Individuals who are unable or unwilling to provide the required information and/or receive the required authorizations will not be allowed access to NCI-Frederick or any controlled premises.

Seller agrees to comply with the Information Technology (IT) systems security and/or privacy specifications set forth in the Agreement; the Computer Security Act of 1987; Office of Management and Budget (OMB) Circular A-130, Appendix III, "Security of Federal Automated Information Systems", and the DHHS Automated Information Systems Security Program (AISSP) Handbook, which may be found at the following websites: Computer Security Act of 1987: http://csrc.nist.gov/ispab/csa_87.txt, OMB A-130 Appendix III: <http://www.whitehouse.gov/omb/circulars/a130/a130appendix.iii.html>, DHHS AISSP Handbook : <http://irm.cit.nih.gov/policy/aissp.html>

The Seller further agrees to include this provision in any subcontract awarded pursuant to the Agreement. Failure to comply with these requirements may

constitute cause for termination under Paragraph 26 of these Terms and Conditions.

The Seller shall be responsible for properly protecting all information used, gathered, or developed as a result of the Agreement. The Seller shall establish and implement appropriate administrative, technical, and physical safeguards to ensure the security and confidentiality of sensitive Government information, data and/or equipment. Any Seller employee who may have access to sensitive information under this agreement shall complete the form entitled, "Commitment to Protect Non-Public Information – Contractor Agreement," which may be found at the following website: <http://irm.cit.nih.gov/security/Nondisclosure.pdf>

A copy of each signed and witnessed Non-Disclosure agreement shall be submitted to the Contracting Officer prior to performing any work under the Agreement.

The Seller shall assure that each employee has completed the NIH Computer Security Awareness Training (<http://irtsectraining.nih.gov>) prior to performing any work under this contract.

The Seller shall maintain and submit to the Contracting Officer a listing by name and title of each individual working under this contract, who has completed the NIH required training. Any additional security training completed by Seller staff shall be included on this listing.

In addition, during all activities and operations on Government premises, the Seller shall comply with DHHS, including National Institutes of Health (NIH), rules of conduct. Should the Seller have questions concerning these requirements or need of procedural guidance to ensure compliance they may contact the cognizant SAIC-Frederick, Inc. acquisition representative.

28. TOBACCO USE AT THE NCI-FREDERICK

In accordance with the Department of Health and Human Services (HHS) directive, the NCI-Frederick campus is a tobacco free workplace. Use of tobacco in any form is prohibited on the entire NCI-Frederick campus. This includes personal vehicles while on NCI-Frederick property and all government vehicles, regardless of their location.

This policy applies to all employees, Government and Contractor, visitors, subcontractors, vendors and guests of the NCI-Frederick, and extends to all HHS owned or leased facilities and properties external to the NCI-Frederick campus where the sole tenant(s) are HHS and/or SAIC-Frederick employees.

Signature Required

Date

October 3, 2003